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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 SOFTVAULT SYSTEMS, INC.,

12 Plaintiff,

13 v.

14 NOVELL, INC.,

15 Defendant.
16

Case No. 5:12-cv-05541-LHK

**STIPULATED MOTION TO
MODIFY SCHEDULE,
PROPOSED ORDER, AND
DECLARATION OF COUNSEL**

17 **STIPULATED MOTION**

18 On February 4, 2013, the Court entered its “Minute Order and Case Management Order”
19 (“Scheduling Order,” ECF No. 23) in the above-captioned action (“Action”) and in two
20 companion actions: *SoftVault Systems, Inc. v. Research in Motion*, Case No. 12-CV-5544 LHK
21 (“RIM Action”) and *SoftVault Systems, Inc. v. International Business Machines Corp.*, Case No.
22 12-CV-5546 LHK (“IBM Action”). The RIM Action has since settled and been dismissed.

23 Also on February 4, 2013, the Court set “Defendant Novell, Inc.’s Motion to: (1) Dismiss
24 Plaintiff’s Complaint for Failure to State a Claim and (2) Transfer to Utah to Cure Defects in
25 Personal Jurisdiction and Venue” (“Motion to Dismiss,” ECF No. 15) for hearing on May 9,
26 2013. By its Motion to Dismiss, defendant Novell, Inc. (“Novell”) seeks to have the “Complaint
27 for Infringement of U.S. Patent Nos. 6,249,868 and 6,594,765” (“Complaint”) of plaintiff
28 SoftVault Systems, Inc. (“SoftVault”) dismissed and the Action transferred to the United States

District Court for the District of Utah (“Utah Court”). Although SoftVault does not concede that Novell’s Motion to Dismiss has any merit, SoftVault has agreed to join Novell in a request that the Court continue certain deadlines imposed by the Scheduling Order until after the Court hears and decides Novell’s Motion to Dismiss. Hence this stipulated motion.

Specifically, Novell and SoftVault move the Court to modify the Scheduling Order as set forth in the following table:

Event	Scheduling Order	Proposed Schedule
Last day to amend pleadings	April 18, 2013	May 30, 2013
Invalidity contentions and accompanying document production (Patent L.R. 3-3, 3-4)	April 18, 2013	May 30, 2013
Exchange of proposed terms for construction (Patent L.R. 4-1)	May 2, 2013	June 6, 2013
Exchange of preliminary claim constructions and extrinsic evidence (Patent L.R. 4-2)	May 23, 2013	June 20, 2013
Joint claim construction and prehearing statement (Patent L.R. 4-3)	June 20, 2013	July 3, 2013
Completion of claim construction discovery (Patent L.R. 4-4)	July 11, 2013	July 18, 2013
Opening claim construction brief (Patent L.R. 4-5(a))	July 25, 2013	No change
Opposing claim construction brief (Patent L.R. 4-5(b))	August 15, 2013	No change
Reply claim construction brief (Patent L.R. 4-5(c))	August 23, 2013	No change
Technology tutorial	September 12, 2013	No change
Claim construction hearing (Patent L.R. 4-6)	September 19, 2013	No change

The proposed modifications do not affect Court proceedings in this Action that are presently coordinated with the IBM Action, or reduce the time available to the Court to review materials before the claim construction hearing. More specifically, the proposed modifications do not affect the technology tutorial and claim construction hearing dates, which will remain coordinated with the corresponding dates in the IBM Action; and the proposed modifications do not reduce the time between the conclusion of claim construction briefing and the claim construction hearing.

Accordingly, Novell and SoftVault, by and through their respective undersigned counsel, respectfully request that the Court enter an order modifying the schedule as set forth above. Undersigned counsel for Novell attests that he has obtained the concurrence of below-identified counsel for SoftVault in the filing of this document.

Dated: March 20, 2013

Dated: March 20, 2013

Jonathan T. Suder
Corby R. Vowell
Todd I. Blumenfeld
FRIEDMAN, SUDER & COOKE

Sterling A. Brennan
L. Rex Sears
MASCHOFF BRENNAN

By: /s/ Corby R. Vowell
Attorneys for Plaintiff
SOFTVAULT SYSTEMS, INC.

By: /s/ L. Rex Sears
Attorneys for Defendant
NOVELL, INC.

~~Proposed~~ ORDER

PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED.

Dated: March 22, 2013



Lucy H. Koh
UNITED STATES DISTRICT JUDGE

Pursuant to Local Rule 6-2(a), Novell's undersigned counsel declares, under penalties of perjury under the laws of the United States of America (and using terms as defined in the foregoing "Stipulated Motion to Modify Schedule" ["Motion to Modify"]), that:

1. The reasons for seeking the continuances request by the Motion to Modify are twofold. First, because Novell's Motion to Dismiss may result in this Action being transferred to the Utah Court, which does not share this Court's Local Patent Rules, Novell desires to have its Motion to Dismiss decided before Novell is required to comply with deadlines and requirements imposed by this Court's Patent Local Rules. Second, Novell is negotiating terms with an indemnitor, and it would be best for all concerned—SoftVault, Novell, and the indemnitor—if those negotiations were concluded in advance of extensive substantive engagement with the issues.
2. There have been no previous time modifications in the Action.
3. The modifications requested by the Motion to Modify will not affect the schedule for the Action other than as set forth in the Motion to Modify. Specifically, although the deadline to amend pleadings would be continued, as would various deadlines falling before opposition claim construction briefs under Patent Local Rules 4-5(b) and 4-5(c), those continuances would not affect subsequent events.

Dated: March 20, 2013

/s/ L. Rex Sears